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JOHN K. MCCORMICK			AMSDELL, DANA	
6781 GLACIER DRIVE			ART UNIT	PAPER NUMBER
WEST BEND, WI 53090			3627	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/710,384	<b>Applicant(s)</b> MCCORMICK, JOHN K.
	<b>Examiner</b> DANA AMSDELL	<b>Art Unit</b> 3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

#### **1. 35 U.S.C. §112 Rejections:**

Applicant's amendments to claims 1, 7 and 19, filed 10/14/2008, that expand the abbreviated terms are acknowledged; as well as the removal of the term "temporarily" and "appropriate" for clarity purposes. Therefore, the rejection relating to this indefinite claim language has been withdrawn. However amended claims 1, 7 and 19 still recite the limitation "the MRP, MRP II and any other MIS". As noted in the previous Office action, there is insufficient antecedent basis for this limitation in the claim. There are numerous MRP, MRP II and MIS software products available with varying features and applications. If specific functions of "the" products are relied upon for the system and method of the immediate invention, they must be recited in the claims.

#### **2. 35 U.S.C. § 103 Rejections:**

Applicant's arguments in essence, regarding the prior art reference, Ferreri's failure to teach:

a. selecting a primary strategic objective; b. listing the possible strategic objective measure; and c. selecting the primary strategic objective measure and calculation, have been fully considered, but they are not persuasive. Limitation to the term "primary strategic objective" not being an economic incentive is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification and the

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embodiments presented therein, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As discussed in the telephone interview of October 10<sup>th</sup>, the breadth of the term "primary strategic objective", as it is recited in the claim and read in light of the specifications "BEST MODE", does not limit the objective to exclude economic considerations (measures), for order quantity determination when holding a variable (parts components) fixed.

Applicant remarks further that "Ferreri does not run the MRP for a planning period as if the current work or activities were in fact already completed per the existing schedule, but rather generates the historical report upon the actual historical usage of high level component parts, runs the MRP to determine the lot size or order quantity based upon the forecasted demand for the component and then compares the forecasted lot size or order quantity with the historical demand to look for abnormalities. All of this being based upon the forecasted demand and the economic order calculation formula".

Examiner respectfully draws attention to Applicant's specification section "BEST MODE" reciting a planning period being one that includes "a[n] historical planning period" as taught by Ferreri. As far as Applicant's remarks regarding comparisons for "abnormalities", this feature teaches the claim limitation "taking the first expected results and subtracting the second expected results to determine the impact said data has on the strategic objective".

In general, Applicant's remarks do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the **claims**

present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 7 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim features "first expected output" and "second expected output" are introduced into the amended claims without a written description or distinction from "first" and "second expected results". Thus they will be examined without having a distinctive limitation.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 7 and 19 recite the limitation "*the MRP, MRP II and any other MIS*".

There is insufficient antecedent basis for this limitation in the claim.

7. Claims 2-6, 8-12, and 20-24 are rejected as depending from 1, 7, and 19 respectively.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1 - 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferreri et al (US 6,681,141), here-in-after "Ferreri" and Keeler et al. (US 5,781,432), here-in-after "Keeler", and further in view of Eck et al. (US 2004/0024628), here-in-after "Eck".

10. Regarding claim 1, Ferreri discloses the steps of:

- a. selecting a primary strategic objective;
- b. listing the possible strategic objective measures;
- c. selecting the primary strategic objective measure from said list of possible strategic objective measures (Fig. 1, elm. 110 and column 3, lines 27- 32);
- d. running the materials requirements planning (MRP), manufacturing resource planning (MRP II) and any other management information system (MIS)

for a planning period as if the currently required activities and/or work were in fact already ordered and/or run per the existing activity schedule and ordering rules to determine a first expected output (Fig. 1, elm 114);

e. determining the first expected results from said first expected output as measured in terms of said primary strategic objective measure (Fig. 1, elm. 112 and column. 4, lines 4-8 and lines 14-15 wherein history data is defined to be saved current runs);

As to steps ]f – j], Ferreri discloses modifying a required activity ((sales), see fig. 1, elm. 114 and column 4, lines 8-14), and re-running the said MRP, MRP II and any other MIS (simulation mode) for said planning period as if the remaining activities and/or work were in fact already run per said existing activity schedule (see column 4, lines 32-44 "independent demand" and said existing ordering rules and the determination of second expected results of the said modified data created in step [f] as measured in terms of the said primary strategic objective measure calculation (column 4, lines 8-12). Further, Ferreri discloses taking the said first expected results and subtracting said second expected results to determine the impact of the said *data* that was modified in step f on said strategic objective measure (Fig. 1, elm 116 and fig . 2, "DELTA"). Ferreri also discloses some limitations of step [i]. in determining the new order and/or lot size that is consistent with said primary strategic objective by taking the said impact found in step [h], (column 4, lines 20-33, wherein deviations within a normal range are acceptable for ordering and those outside the range are corrected for error).

11. Ferreri does not teach temporarily modifying the activity schedule by removing one of said activities or work; nor does he disclose said impact found in step [h] and subtracting any fixed amount associated with the said activity or work that was removed in step [f] in the same units of measure as the said primary strategic objective measure and then dividing the result by the amount per unit or piece of the said removed job, the said amount being measured in the same unit of measure as the said primary strategic objective measure; and step [j] being re-running steps [d through i] above for each different job and/or order existing.

Keeler however, discloses removing a variable (activities or work), in a plant operation by constraining the control input variable to either a range or a constant. Setting the constant equal to zero effectively removes the variable when you run the model (see fig. 7, elm. 150, column 6, lines 9-11, and column 10, lines 7-35). It would have been obvious to a person of ordinary skill in the art to include temporary omission of an activity in a modification such as Keeler discloses, because it yields useful data for a 'what if' scenario; e.g. 'what-if' sales go to zero, or 'what-if' there is a necessitated deletion of work or material from a manufacture process). Keeler also discloses step [j] being the re-running of steps varying the control input (fig. 4, elm. 88 and column 7/8, lines 45-67/1-4). It would have been obvious to a person of ordinary skill in the art to run the steps iteratively to obtain information for evaluating and comparing the business impact of independent steps, activities and materials from the process.

Regarding the subtraction of fixed costs and the amount per unit calculation, this limitation is typically rolled into most MIS operations. However Eck discloses this

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explicitly (pg. 2, ¶ 0022 – 0026 wherein the strategic objective is measured in scaleable revenue dollars or any other “business impact” measure). It would have been obvious to a person of ordinary skill in the art to add this conclusive feature to the measure of the impact of an activity so as to determine material or resource requirements.

12. Regarding claims 7, 13 and 19, Ferreri discloses the apparatus for determining an entity's order and/or lot sizes that the entity purchases and/or produces consistent with and supportive of the entity's primary strategic objective, wherein said apparatus includes:

- a. user interface devices and modules operatively coupled to said apparatus;
- b. a memory that stores databases and computer readable code;
- c. said databases including original databases and modified original databases;
- d. a processor operatively coupled to said memory, said processor configured to implement said computer readable code..... (fig 4, elms. 415, 419, 414, 416 and 410).

Ferreri additional discloses claim 13 being the computer program embodied on a computer-readable medium, as well as the device and system of claim 19 ( fig. 4 and column 1, lines 6-12).

13. Regarding claims 2- 6, 8-12, 14-18 and 20-24, Ferreri discloses wherein said new order and/or lot size includes adding an additional quantity to said new order and/or lot size as a possible outcome to the performance of the steps recited in claim 1

(Fig. 1, elm. 120, and column 4, lines 8-12 and lines 16-19). Additionally, he discloses said new order and/or lot size includes an upper limiting value that is not to be exceeded as it depends from claim 1, as well as said new order and/or lot size is overridden and a substitute value put in for the said new order and/or lot size (Fig. 1, elms. 118, 120 and 122 and column 4, lines 28-33). Also, Ferreri discloses said primary strategic objective is any strategic objective (column 3, lines 58-62).

Ferreri however does not disclose adding an additional quantity as an exclusive limitation. Keeler does disclose this and also discloses said new order and/or lot size includes an upper limiting value that is not to be exceeded as it depends from claim 1, by including a step which allows user to constrain output parameters by application of "fuzzy constraints" (Fig. 14, elm. 342, Fig 15 and column 9, lines 39-45). It would have been obvious to a person of ordinary skill in the art to add an output constraint that only adds quantities to orders if the model exclusively represents an industry growth model, or a model that embraces a contractual obligation to increase order quantities.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANA AMSDELL whose telephone number is (571)270-5210. The examiner can normally be reached on 5/4/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627

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